

UNITED STATES DISTRICT COURT OF CALIFORNIA  
SOUTHERN DIVISION

AXA EQUITABLE LIFE INSURANCE  
COMPANY,

Plaintiff,

v.

H. THOMAS MORAN, II, Court-  
Appointed Receiver of LYDIA  
CAPITAL, LLC and DAWSON AND  
OZANNE, as Trustee of the Alvin  
Fischbach Irrevocable Trust,

Defendants.

Case No. 08-CV-0569-BTM (BLM)

**ORDER GRANTING JOINT  
MOTION FOR PROTECTIVE  
ORDER**

PURSUANT TO THE STIPULATION OF THE PARTIES, the Court  
hereby enters the following Stipulated Protective Order (the "Stipulation"):

1. As used herein, the term "Confidential Material" shall mean  
documents that a Party (the "Producing Party") in good faith deems to be  
confidential pursuant to the terms of this Stipulation, except that such documents  
and information that are publicly available shall not be deemed Confidential  
Material.

2. The Producing Party shall designate in good faith particular  
documents Confidential Material by labeling such documents "Confidential

1 Material.” If the non-producing Party (the "Receiving Party") objects to the  
 2 designation of particular documents as Confidential Material, the Receiving Party  
 3 shall state such objection in writing to the Producing Party, and the Parties shall  
 4 endeavor in good faith to resolve such objection. If such objection cannot be  
 5 resolved, then the Producing Party shall, within ten (10) days of receiving an  
 6 objection, move the Court for an order approving such designation.

7 3. The recipient of documents designated as Confidential Material shall  
 8 not use such documents for any purpose other than for the preparation or  
 9 presentation of the Receiving Party's case in this action or other litigation between  
 10 the Parties, except as set forth below.

11 4. Counsel for the Receiving Party shall not disclose any document  
 12 marked Confidential Material, except to the following persons:

13 (a) To a Party, or an employee of a Party, or a deponent, to the  
 14 extent necessary to the preparation or presentation of the Receiving Party's case in  
 15 this action or other litigation between the Parties.

16 (b) To an expert or experts who has or have been retained or  
 17 specially employed by the attorneys in this action; or

18 (c) To the Court.

19 5. The Parties recognize that a Receiving Party is not prohibited from  
 20 using any document marked Confidential Material in the investigation of such  
 21 Party's case or defense, provided that, such Party does not show or quote a  
 22 document so designated to any person other than as described in paragraph 4,  
 23 subject to any exceptions set forth in paragraph 6 below. Deposition testimony  
 24 concerning any document designated Confidential Material, which testimony  
 25 reveals the contents of such materials shall be deemed confidential, and the  
 26 transcript of such testimony, together with any exhibits referred to therein, shall, at  
 27 the request of the Producing Party to the Court reporter, be separately bound with a  
 28 cover page prominently marked Confidential Material. Such portion of the

1 transcript shall be deemed to be Confidential Material within the meaning of this  
2 Stipulation.

3 6. Before disclosing documents labeled Confidential Material, or the  
4 contents thereof, to any person falling within the categories set forth in paragraphs  
5 4(a), 4(b), and 4(c) above who are not employed by or affiliated with the  
6 Producing Party, counsel shall explain to each such person that the documents are  
7 confidential and are subject to a this Stipulation. Before disclosing any  
8 Confidential Material, or the contents thereof, to any such person, counsel for the  
9 Party indenting to make such disclosure shall advise the intended recipient of the  
10 provisions of this Stipulation and provide the intended recipient with a copy of this  
11 Stipulation. In addition, the intended recipient shall sign a written certification in  
12 the following form:

13 I hereby acknowledge that I, [name], [position of employment],  
14 am about to receive confidential information supplied in  
15 connection with the litigation entitled AXA Equitable Life  
16 Insurance Company v. H. Thomas Moran, II, Court-Appointed  
17 Receiver of Lydia Capital, et al., Case No. 08-CV-0569. I  
18 understand that such information is to be provided pursuant to  
19 the terms and restrictions of the Protective Order attached  
20 hereto (as the "Stipulation"). I have been given a copy of the  
21 Stipulation and I have read the Stipulation. I understand that  
22 Confidential Material as defined in the Stipulation, or any notes  
23 or other records that may be disclosed to me or made by me  
24 regarding any such materials, must not be disclosed to any  
25 persons except as permitted by the Stipulation. I agree to be  
26 bound by the terms of the Stipulation.

27 7. No copies of any documents labeled as Confidential Material, shall be  
28 made except to the extent necessary for the preparation of the Receiving Party's  
case in this action or other litigation between the Parties, including, but not limited  
to, preparation for trial and for any and all appeals involving this action or other  
litigation between the Parties, and, if the duplicating process by which copies of  
documents labeled as Confidential Material are made does not reproduce the  
Confidential Material stamp appearing on the original, all copies shall be stamped  
with a Confidential Material designation.

1           8.     This Stipulation shall not be deemed a waiver of:

2                   (a)     Any Party's right to object to any discovery request for any  
3 reason;

4                   (b)     Any Party's right to seek an order compelling discovery with  
5 respect to any discovery request; and

6                   (c)     Any Party's right at any hearing to object to the admission of  
7 any evidence for any reason.

8           9.     The provisions of this Stipulation shall continue in effect with respect  
9 to any Confidential Material unless expressly released by the Producing Party, and  
10 such effectiveness shall survive the use of any such Confidential Material in any  
11 court proceeding and the entry of any final judgment, dismissal or settlement  
12 herein. The Court shall retain jurisdiction to enforce or modify this Stipulation.

13           10.    Counsel shall attempt to agree upon procedures to protect the  
14 confidentiality of information designated as Confidential Material at any hearing or  
15 trial. Prior to such hearing or trial, counsel shall submit proposed procedures,  
16 including any disputes relating thereto, to the Court for its approval or  
17 modification.

18           11.    This Stipulation is agreed upon without prejudice to the right of any  
19 Party to waive the applicability of this Stipulation to any Confidential Material  
20 produced by that Party.

21           12.    The failure to designate a document as Confidential Material does not  
22 constitute a waiver of such claim, and the Producing Party may so designate a  
23 document after such document has been produced, with the effect that such  
24 document is subject to the protections of this Stipulation only on and after the date  
25 of the Receiving Party learning of such designation.

26           13.    If information subject to a claim of attorney-client privilege, attorney  
27 work product, or any other ground on which production of such information should  
28 not be made to any Party is nevertheless inadvertently produced to such Party(ies),

1 such production shall in no way prejudice or otherwise constitute a waiver of, or  
2 estoppel as to, any claim of privilege, work product, or other ground for  
3 withholding production to which the Producing Party would otherwise be entitled  
4 (collectively, a “privilege”). If a claim of inadvertent production is made pursuant  
5 to this paragraph with respect to information then in the custody of the Receiving  
6 Party, the Receiving Party shall promptly return to the Producing Party that  
7 material (or the portion thereof) as to which the claim of inadvertent production  
8 has been made, including any copies that are not destroyed, and the Receiving  
9 Party shall not use such information for any purpose until the Court issues an order  
10 concerning the Producing Party’s claim that the documents were inadvertently  
11 produced. The Party returning such material may subsequently move the Court for  
12 an order compelling production of the material, but any such motion shall not  
13 assert as a ground for entering such an order the fact or circumstances of the  
14 inadvertent production, unless the moving Party asserts that there was no valid  
15 basis for withholding production of the documents.


16 14. In the event that any person or Party bound by this Stipulation is  
17 served with a subpoena or is otherwise ordered by any other court and/or  
18 administrative agency to produce Confidential Material obtained under the terms  
19 of this Stipulation, such persons or Parties shall promptly notify counsel for the  
20 Producing Party by electronic mail and facsimile of the pendency of such subpoena  
21 or other order to produce on or no later than ten (10) days before the return date of  
22 the subpoena or other order to produce.

23 15. Any Party may apply at any time to the Court to enforce this  
24 Stipulation; for relief from, modification of or exception to this Stipulation; or for  
25 such other relief as may be appropriate with respect to this Stipulation.  
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1           16. This Stipulation has no effect upon, and shall not apply to, a Party's  
2 use or disclosure of its own Confidential Material for any purpose.

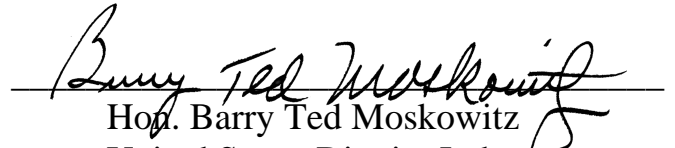
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4 **IT IS SO ORDERED.**

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6 Dated: May 7, 2008

7   
8 Hon. Barry Ted Moskowitz  
9 United States District Court,  
10 Southern District of California

11 IT IS FURTHER ORDERED that notwithstanding any provision above, no  
12 document may be submitted under seal to the Court unless the party claiming  
13 confidentiality first establishes good cause for sealing.

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15 Dated: May 7, 2008

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17 Hon. Barry Ted Moskowitz  
18 United States District Judge  
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